

The relevance of the FAO ‘*Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*’ to the SDC Project ‘*Advancing Land Use Rights and Natural Resource Benefits*’ in Mozambique.

Background of Land Governance in Mozambique

The basis for land governance in Mozambique is the constitution of 1975 and the new constitution of 1990. The constitution contains five land policy objectives:

- Achieving food security
- Enabling small-scale agriculture to become productive and guaranteeing resource access
- Promotion of private investment without hindering the interests of local communities
- Consideration of ecological functions
- Land-based taxation system

Mozambique’s land policy is comparatively innovative and pro-people. Some of its innovative elements are:

- Only the state can own land
- Access to land must be secure for the population and investors
- Access to land for women must be secured
- National and foreign investments in land are to be invited
- Land use rights for communities must be secured
- Natural resources must be managed in a sustainable way

Challenges to the land governance system in Mozambique

Many communities depend on small-scale agriculture, yet only 20% of Mozambique’s 20 million hectares of arable land are currently used for cultivation. Specific challenges to implementation of a progressive, innovative land governance policy include:

- 40% of small-scale farmers do not have tenure security to the land they use
- Internal and external pressure on land as an investment has been growing for a decade
- The increasing investment pressure on land coupled with increasing policy-level pressure has created a nexus between the ruling party, the state bureaucracy, and the economic/investment context
- This situation has triggered a series of negative side effects:
 - weak information and public knowledge on land governance issues
 - weak monitoring of the implementation of land governance
 - disproportionately high levels of insecurity regarding land tenure among women, the unemployed, and young persons
 - increased potential for conflict over land access and resources

The SDC project on ‘Advancing Land Use Rights and Natural Resource Benefits’ in Mozambique

The project aims at advancing land use rights and natural resources through three avenues:

- Assessment of the implementation process of land governance in the country
- Assessment of community rights prospects and community involvement in this process
- Information dissemination on land governance and natural resources

Support to the communities is effected through:

- Support to land planning and natural resources planning
- Support towards conflict prevention, especially between communities and private investors

FAO Voluntary Guidelines

A number of aspects of the Voluntary Guidelines are relevant to the project. These aspects are contained in various parts of the Voluntary Guidelines, in particular the following parts:

2. General matters
3. Legal recognition and allocation of tenure rights
4. Transfer and other changes to tenure rights
5. Administration of tenure
6. Responses to climate change and emergencies

The following table summarises the aspects of the FAO Voluntary Guidelines that are thematically related to the SDC project in Mozambique. The table describes and comments on that relationship.

Comparison of provisions in the FAO Voluntary Guidelines with project elements of the SDC project 'Advancing land use rights and natural resource benefits'

Part of the Voluntary Guidelines	Sub-chapter	Aspect described in the Voluntary Guidelines	Relation to the SDC project	Remark
Part 2. General matters	3. Guiding principle of responsible tenure governance	<ul style="list-style-type: none"> • Demands that states should recognise and safeguard tenure rights • Demands access to land-related information and legal support in case of rights infringements • Demands socially responsible behaviour from investors (3.2) • Demands use of natural resources in a manner that does not impinge on their ecosystem functionality 	<ul style="list-style-type: none"> • The project supports partners in conflict situations in a gender-sensitive manner • The project also promotes community involvement in land planning • The project supports natural resource planning 	The general specifications in the Voluntary Guidelines are similar to specifications in the land policy of Mozambique
	4. Rights and responsibilities related to tenure	<ul style="list-style-type: none"> • Suggests that there be no absolutism in land tenure and that tenure rights observe social and environmental obligations • Suggests to widely publicise land-related information 	<ul style="list-style-type: none"> • This is what the SDC project tries to implement via broad involvement of all actors in land planning decisions • Availability of land-related information is one of the major elements of the SDC project 	This is also what the Mozambique land policy specifies. Information dissemination is identified as a major weakness in the current situation and governance
	5. Policy, legal and organisational frameworks related to tenure	<ul style="list-style-type: none"> • Demands that states give specific consideration to recognise tenure rights systems and the particular obstacles faced by women in land tenure. Demands as well to ensure the recognition of this fact (11.6) • Demands to simplify land-related procedures 	<ul style="list-style-type: none"> • The SDC project (annex 10 of the project document) acknowledges that tenure rights held by women in Mozambique are often of secondary nature. Tenure rights are often linked to social relationships. 	The simplification of land-related procedures has been a major element in the land policy of 1995
Part 3. Legal recognition and allocation of tenure rights and duties	7. Safeguards	<ul style="list-style-type: none"> • Demands that existing tenure rights that may not be protected by existing law should be identified and considered in land-related negotiations 	<ul style="list-style-type: none"> • Important for the project to consider in assessing the implementation process of land governance and conflict prevention 	The project component on land and natural resource use monitoring (Component 1) also seeks to look carefully at this issue.
	9. Indigenous peoples and other communities with customary tenure systems	<ul style="list-style-type: none"> • Demands that the tenure of communities holding customary tenure systems are considered and legalised so that these tenure systems can be part of subsequent land negotiations (9.1, 9.2) • Demands to consider international obligations of a country, for example, the Convention on Biological Diversity (CBD) 	<ul style="list-style-type: none"> • Provision in the CBD may be important for the project to consider in land use planning • CHALLENGE: The promotion of women land rights by the project may be delicate in case it collides with customary law which may also be promoted by the project 	This is why the SDC project put a strong emphasis on gender relationships in the context of land governance in Mozambique.

Part of the Voluntary Guidelines	Sub-chapter	Aspect described in the Voluntary Guidelines	Relation to the SDC project	Remark
		<ul style="list-style-type: none"> Demands negotiations among all concerned parties in situations where 'modernised' women land rights collide with customary law (9.6) 		
	10. Informal tenure	<ul style="list-style-type: none"> Demands for the acceptance of informal tenure rights in a manner that respects national law and the 'reality of the situation' 	<ul style="list-style-type: none"> This specification is unclear, especially in relation to the difference between informal and customary tenure. The project is challenged to position its support especially in the area of conflict prevention 	Unclear specification. Need for project to clarify.
	11. Markets	<ul style="list-style-type: none"> Demands the creation of land sale and lease markets, and that the state ensure the functioning of such markets. Such markets are expected to lessen the conflict potential over land tenure 	<ul style="list-style-type: none"> Important to the project in terms of assessing the implementation of land governance and information dissemination The project could contribute effectively to the creation of markets through information and monitoring 	The tenure aspect of FAO Voluntary Guidelines is particularly challenging in the context of Mozambique, since the legal framework on land does not allow a land market as such. As highlighted both in the land policy and in the land law, only the state can own land, and land cannot be sold or bought.
	12. Investments	<ul style="list-style-type: none"> Demands to focus on 'responsible investment', that is investment to ensure that core development goals are ensured through investments Suggests introduction of ceilings in land deals. Calls for the introduction of certain investment models along which investments can be planned Demands the introduction of mandatory consultation between all actors before concluding land deals Demands that international investments not compromise food security and environmental functionality 	<ul style="list-style-type: none"> The project can support investments through land use and natural resources planning The definition of such investment models could be an element of the project support under: 'land and natural resources planning' 	The focus of investments on core development goals is important in a country where more than 90% of agricultural production originates from smallholdings
Part 5. Administration of tenure	17. Records of tenure rights	<p>Demands that:</p> <ul style="list-style-type: none"> tenure rights of all kinds (official, customary, informal) be recorded in a public system the spatial accuracy of a plot be the core identification mark to identify tenure tenure information be available to the public 	<ul style="list-style-type: none"> The project's work on land planning and information dissemination is well supported by part 17 of the Voluntary Guidelines The project could also support a GIS land identification tool which would greatly support the localisation and information of 	This demand is also in the Mozambique 1995 land policy. However, current reality is influenced by the 'state–bureaucracy–private business' nexus so that information is

Part of the Voluntary Guidelines	Sub-chapter	Aspect described in the Voluntary Guidelines	Relation to the SDC project	Remark
		subject to private restriction. However, such restrictions should not prevent scrutiny of corruption	tenure rights	not shared as it should be. It is important also to mention that Mozambique has a weak land administration system.
	19. Taxation	Reaffirms: <ul style="list-style-type: none"> the right of the state to collect land-based taxes so that the overall development goal can be achieved. 	<ul style="list-style-type: none"> The project is not directly concerned with taxation but the project element that deals with information dissemination could effectively contribute to help the state acquiring information for the purpose of taxation 	
	21. Resolution of disputes over tenure rights	Demands: <ul style="list-style-type: none"> that states should provide dispute-resolution fora that special dispute-resolution fora are introduced to handle tenure conflicts in the area of customary land tenure 	<ul style="list-style-type: none"> The project's activities on information dissemination and conflict prevention serves this provision in the Voluntary Guidelines well 	
Part 6. Responses to climate change and emergencies	25. Conflicts in respect to tenure of land, fisheries and forests	Demands that: <ul style="list-style-type: none"> states address potential conflicts at an early stage violations of tenure rights be documented 	<ul style="list-style-type: none"> These two demands can well be supported by the project's activities on information dissemination and conflict prevention and resolution 	This is exactly what is foreseen in the land law